91 FLRR 1-1343

Commander Naval Air Pacific, San Diego, CA and Naval Air Station, Whidbey Island, Oak Harbor, WA and AFGE, Local 1513

Federal Labor Relations Authority

9-CA-00064; 9-CA-00298; 41 FLRA No. 64; 41 FLRA 662

July 17, 1991

Judge / Administrative Officer

Before: McKee, Chairman, Talkin and Armendariz, Members

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Case Summary

A CONTRACTING-OUT REPORT WAS DISCLOSABLE FOR PURPOSES OF MID-TERM NEGOTIATIONS, BUT NOT FOR PURPOSES OF LOBBYING CONGRESS. (1) The union filed a ULP charge when the employer refused to supply it with the BOS contract report, a study of the cost-effectiveness of contracting out agency work. The agency alleged that the disclosure was prohibited by law within the meaning of 5 USC 7114(b)(4). It cited the Freedom of Information Act, 5 USC 552(b)(5). The FLRA found that FOIA permits, but does not require agencies to withhold certain information. The statute did not prohibit the disclosure of information. Similarly, 5 USC 7106(a), the management rights provision of the CSRA, did not prohibit the disclosure of information. This objection was unpersuasive. (2) The union said that it needed the BOS report, a study of the cost-effectiveness of contracting out decisions, to aid in lobbying Congress to stop the contracting out of bargaining unit jobs. The Authority noted that 5 USC 7114(b)(4) entitled the union to the information necessary for it to perform its representational responsibilities with regard to collective bargaining. The Authority defined "collective bargaining" to include bargaining, administration of a labor agreement, third-party dispute resolution procedures, the processing of grievances and cases before the FLRA, and other labor-management activities that affected employees' conditions of employment or a union's status as an exclusive representative. The Authority concluded that information had to be sufficiently related to collective bargaining, as defined, to be within the statutory duty to disclose. The Authority determined that the union's lobbying of Congress was not sufficiently connected with collective bargaining to give rise to an obligation to disclose information. The parties were not engaged in discussions or negotiations relating to contracting out and Congress was not considering contracting-out legislation. Therefore, the employer had no duty to supply the union with the BOS report so that it could use it in its lobbying effort. However, the union also requested the report to aid it its mid-term negotiations on the contracting-out provisions of the contract. The information was mandatorily disclosable for this purpose. The Authority directed the employer to furnish the information to the union.

Full Text

DECISION AND ORDER

I. Statement of the Case

This consolidated unfair labor practice case is before the Authority in accordance with section 2429.1(a) of the Authority's Rules and Regulations, based on a stipulation of facts by the parties, who have agreed that no material issue of fact exists. The General Counsel and the Respondents filed briefs with the Authority.

The complaints allege that Respondent Naval Air Station, Whidbey Island (Respondent Whidbey) violated sections 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to furnish the Union with information requested under section 7114(b)(4) of the Statute. The complaints further allege that the Respondent Commander Naval Air Pacific (Respondent Commander) violated section 7116(a)(1) of the Statute by interfering with the bargaining relationship between Respondent Whidbey and the Union.

For the following reasons, we conclude in Case No. 9-CA-00298 that the Respondents Violated the Statute, as alleged in the complaint. We find in Case No. 9-CA-00064 that the Respondents' actions did not violate the Statute and, therefore, the complaint should be dismissed.

II. Facts

In 1986 Respondent Whidbey implemented a Base Operations Support contract (BOS contract), which contracted out certain work previously performed by unit employees. Subsequently, Respondent Commander requested the Naval Audit Service to investigate apparent differences between claimed savings at various contracted-out activities and actual increases in expenses at those activities. In June 1989, the Naval Audit Service prepared the requested report (BOS report), which "included an investigation of the BOS contract at Respondent Whidbey." Stipulation at 3, para. 8.

A. Case No. 9-CA-00064

In August 1989, the Union was lobbying the U.S. Congress in an effort to prevent any further loss of unit jobs as a result of contracting out. The Union had information "which led it to believe that the BOS contract report was critical of the cost-effectiveness of the BOS contract." Id., para. 11. On August 1, 1989, the Union requested Respondent Whidbey to provide the Union with a copy of the BOS report "in the hope that . . . the . . . report would assist the lobbying effort. . . ." Id., para. 12.

By letter dated August 16, 1989, Respondent Whidbey informed the Union that it was Prohibited from releasing the BOS report because the report "was neither commissioned nor originated at Naval Air Station, Whidbey Island." Id. at 4, para. 15. Respondent Whidbey stated that it was forwarding the request "to the cognizant official." Id. By letter dated August 27, 1989, Respondent Commander denied the Union's request on the grounds that the BOS report was not necessary, within the meaning of section 7114(b)(4) of the Statute, and that the report constituted "interagency predecisional advice" that had "no relationship to the collective bargaining process." Id. at 5, para. 16.

B. Case No. 9-CA-00298

On January 25, 1990, the Union made a second request to Respondent Whidbey for the BOS report. The Union stated that it needed the BOS report "to prepare for mid-term negotiations on the procedures to be observed by Respondent Whidbey in any future decisions to contract out unit jobs and on the appropriate arrangements for unit employees adversely affected by any future decisions to contract out unit jobs." Id., para. 18.

On January 31, 1990, Respondent Whidbey forwarded the Union's second request to Respondent Commander. On March 19, 1990, Respondent Commander denied the request on the same grounds it had denied the previous request.

The parties stipulated that the BOS report is normally maintained by the Respondents in the regular course of business, is reasonably available, and does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining, within

the meaning of section 7114(b)(4) of the Statute.

III. Positions of the Parties

A. Respondents

In Case No. 9-CA-00064, the Respondents assert that they have no obligation under section 7114(b)(4) of the Statute to provide the Union with information for the purpose of lobbying Congress. The Respondents assert that information requested for lobbying activities is not necessary, within the meaning of section 7114(b)(4).

In Case No. 9-CA-00298, the Respondents contend that the BOS report does not affect unit employees' conditions of employment. The Respondents argue that the report, which reviews and analyzes work performed by, and cost effectiveness of, contractor employees, "is not relevant and necessary for a Union to impact bargain" and "has no relationship to appropriate arrangements." Respondents' Brief at 5. The Respondents also argue that the BOS report "is not relevant and necessary for the Union to mid-term bargain or administer their collective bargaining agreement." Id.

The Respondents make three arguments relevant to both cases. First, the Respondents argue that disclosure of the BOS report is prohibited by law because the report falls within the coverage of exemption 5 to the FOIA, 5 U.S.C. 552(b)(5), which exempts from the disclosure requirements of the FOIA matters which constitute:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]

Second, the Respondents argue, based on the Authority's decision in National Labor Relations Board, 26 FLRA 108 (1987) (NLRB), that the report is prohibited from disclosure by section 7106 of the Statute. Third, the Respondents assert that Respondent Commander has no obligation to furnish the BOS report because it has no collective bargaining relationship with the Union.

B. General Counsel

In Case No. 9-CA-00064, the General Counsel contends that the BOS report is necessary, within the meaning of section 7114(b)(4) of the Statute, for the Union to exercise its right under section 7102 to lobby Congress.*1 The General Counsel argues that a union's right under section 7102 to lobby Congress concerning matters which fall within the range of its representational responsibilities "includes its lobbying effort to protect unit jobs from future losses. . . ." General Counsel's Brief at 8. The General Counsel contends, in this regard, that the Union's lobbying efforts do not constitute "political activities," within the meaning of section 7103(a)(14)(A) of the Statute, so as to be excluded from the statutory definition of conditions of employment.*2

The General Counsel argues in Case No. 9-CA-00298 that the BOS report was necessary for the Union to administer the contracting-out provisions in Article 28 of the parties' collective bargaining agreement. The General Counsel argues also that the BOS report was necessary for the Union to determine whether to reopen Article 28 for mid-term bargaining.

IV. Analysis and Conclusions

A. Disclosure of the BOS Report Is Not Prohibited by Law

Section 7114(b)(4) of the Statute provides, as relevant here, that an agency is obligated to furnish requested information "to the extent not prohibited by law[.]" The Respondents argue that disclosure of the BOS report is prohibited both by exemption 5 of the FOIA and by section 7106 of the Statute. We reject these arguments.

First, the FOIA permits, but does not require, agencies to withhold certain information requested under the FOIA. See U.S. Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Chicago, Illinois District Office, 40 FLRA 1070, 1081-82 (1991); Department of the Army Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina, 26 FLRA 407, 412-13 (1987). Stated simply, the FOIA does not prohibit disclosure of

information. Accordingly, the Agency's argument that the BOS report is exempt from disclosure under the FOIA is misplaced.

Second, we reject the Respondents' contention that disclosure of the BOS report is prohibited by section 7106 of the Statute. In this regard, the Authority's decision in NLRB, relied on by the Respondents, was reversed by the U.S. Court of Appeals for the District of Columbia Circuit in National Labor Relations Board Union, Local 6 v. FLRA, 842 F.2d 483 (D.C. Cir. 1988). In particular, the court held that "[s]ection 7106 by any reading does not prohibit the disclosure of anything." Id. at 486. The court's interpretation of section 7106 has been adopted by the Authority. See, for example, American Federation of Government Employees, AFL-CIO, National Council of Field Assessment Locals and Department of Health and Human Services, Social Security Administration, 32 FLRA 982, 987 (1988). See also National Labor Relations Board, 38 FLRA 506 (1990) (NLRB II), petition for review filed sub nom. National Labor Relations Board vs. FLRA, No. 91-1044 (D.C. Cir. Jan. 24, 1991). Accordingly, section 7106 does not prohibit the disclosure to the Union of the BOS report.

B. Case No. 9-CA-00064

Under section 7114(a) of the Statute, a labor organization which has been accorded exclusive recognition is entitled to "act for, and negotiate collective bargaining agreements" covering all employees in the unit. Section 7114(b)(4)(B) provides that an agency's duty to "negotiate in good faith" includes the obligation to furnish a union, upon request, with data that, as relevant here, is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining[.]"*3

The Authority has held, and the courts have affirmed, that section 7114(b)(4) encompasses information necessary for an exclusive representative to perform effectively its representational responsibilities. See, for example, American Federation of Government Employees, Local 1345, AFL-CIO v. FLRA, 793 F.2d 1360, 1364 (D.C. Cir. 1986) (court stated that a union's information request must be evaluated "in the context of the FULL RANGE of union responsibilities in both the negotiation and the administration of a labor agreement.") (emphasis in original). See also, for example, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 38 FLRA 120, 130-31 (1990) (NWS), application for enforcement filed sub nom. FLRA v. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, No. 91-1175 (D.C. Cir. April 12, 1991) (respondent required to provide information to enable union to monitor the performance appraisal system); U. S. Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington, 38 FLRA 3, 6-7 (1990) (respondent required to provide copies of portions of the laws and regulations for the union to prepare for bargaining; U.S. Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California, 37 FLRA 987, 994-95 (1990) (respondent required to provide information concerning temporary duty assignments of military personnel in order for the union to pursue a grievance); U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515, 527-28 (1990), application for enforcement filed sub nom. FLRA v. U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, No. 90-1949 (1st Cir. Oct. 1, 1990) (respondent required to disclose names and home addresses of bargaining unit employees in order, among other things, to enable the union to perform its representational functions under the Statute).

The Authority also addressed section 7114(b)(4) of the Statute in NLRB II. We noted that subsections (B) and (C) of section 7114(b)(4), which address, respectively, the requirements of and the limitations on the obligation to furnish information, refer to

"collective bargaining." For the reasons fully set forth in NLRB II, we concluded that the term "collective bargaining" encompasses "the PROCESS wherein the agency and the exclusive representative are engaged in the performance of their mutual obligation to bargain concerning the conditions of employment affecting unit employees." 38 FLRA at 519 (emphasis in original). We also concluded that collective bargaining encompasses bargaining, administration of a collective bargaining agreement, third-party dispute resolution procedures, the processing of grievances and cases before the Authority, and other labor-management activities that affect unit employees' conditions of employment or a union's status as exclusive representative.

Consistent with the principles set forth in these, and other, cases, it is clear that the obligation to provide information under section 7114(b)(4) is broad. It is also clear that the obligation stems expressly and exclusively from the "duty of an agency and an exclusive representative to negotiate in good faith. . . ." Accordingly, noting that the obligation applies only to information that is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining[,]" we conclude that the information must be sufficiently related to collective bargaining under the Statute, as interpreted in NLRB II, to be within an agency's obligation under section 7114(b)(4).

In resolving the complaint in Case No. 9-CA-00064, we note two things at the outset. First, we evaluate the necessity for the requested information in light of the reasons expressed in the Union's request. See, for example, U.S. Department of Justice, Immigration and Naturalization Service, Border Patrol, El Paso, Texas, 37 FLRA 1310, 1321-23 (1990). See also American Federation of Government Employees, AFL-CIO v. FLRA, 811 F.2d 769 (2d Cir. 1987). Compare Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788, 795 (1986) ("an exclusive representative's need for the names and home addresses of the bargaining unit employees it is required to represent is so apparent and essentially related to the nature of exclusive representation itself, that unlike requests for certain types of other information, an agency's duty to supply names and home addresses information does not depend upon any separate explanation by the union of its reasons for seeking the information.").

Neither the parties' stipulation nor the record as a whole discloses the reasons, if any, set forth in the Union's request in Case No. 9-CA-00064. The stipulation provides, however, that at the time of the request, the Union was engaged "in a lobbying campaign of Congress, attempting to prevent any further loss of unit jobs by the contracting out of such jobs[,]" and that the Union requested the BOS report "in the hope that obtaining the information . . . would assist the lobbying effort. . . ." Stipulation at 3, para. 10, 12. Moreover, the parties stipulated that the Respondents "were aware at all times . . . of the reason that the Union had requested the BOS contract report[.]" Id. at 4, para. 14. In the absence of an assertion to the contrary, therefore, we assume that the Union requested the report solely to determine whether it would be useful in its lobbying effort.

Second, it is clear and undisputed that the Union had a right to lobby Congress on the issue of contracting out unit employees' jobs.*4 We note that section 7102 of the Statute refers to "employees' rights" only. See n.1. Compare 5 U.S.C. 7114 ("Representation rights and duties"). Compare also Department of the Air Force, 3rd Combat Support Group, Clark Air Base, Republic of the Philippines, 29 FLRA 1044, 1048 (1987) (Authority concluded that the respondent's refusal to allow a union to distribute handbills interfered with "the Union's section 7102 rights") with Overseas Federation of Teachers and Department of Defense, Dependents Schools, Mediterranean Region, 21 FLRA 757, 759 (1986) (Authority stated that section 7102 "provides for the protection of certain rights of Federal employees."). However, as there is no assertion that the Union's lobbying activities are unlawful, we need not determine whether the activities are encompassed

by 5 U.S.C. 7211,*5 as asserted by the Respondents, or whether, as asserted by the General Counsel, the "Union's efforts to preserve unit positions by lobbying Congress is [sic] included within section 7102 of the Statute."*6 General Counsel's Brief at 7.

Our task, therefore, is to determine whether, in the facts and circumstances of this case, the BOS report is necessary, within the meaning of section 7114(b)(4) of the Statute, for the Union to exercise its right to lobby Congress. Stated otherwise, in light of NLRB II, we must determine whether there is a sufficient link between the Union's lobbying efforts and collective bargaining under the Statute. Noting that the Authority has not previously addressed this issue,*7 we find, for the following reasons, that a sufficient link has not been established here.

The parties stipulated that the Union "was engaged in a lobbying campaign of Congress, attempting to prevent any further loss of unit jobs by the contracting out of such jobs." Stipulation at 3, para. 10. No further information concerning the lobbying effort has been provided, however. More particularly, there is no basis in the record of Case No. 9-CA-00064 on which to conclude that the Union's lobbying efforts were connected with, or related to, any negotiations, consultations, grievances, cases pending before the Authority or other administrative agencies, or other labor-management relations activities. We reject, in this regard, the General Counsel's assertion that the lobbying effort was intended to "enforce Article 28 [of the parties' collective bargaining agreement.]"*8 General Counsel's Brief at 6. Nothing in the parties' stipulation shows any connection between the lobbying effort and Article 28 and an examination of Article 28 fails to disclose a reasonable basis for finding such connection.

We note, in this regard, that nothing in the record shows that, at the time of the request, the parties were engaged in any discussions or activities relating to the contracting out of unit jobs or the Respondents' obligations under Article 28. We also note that nothing in the record shows that the request was related to any pending or contemplated Congressional action relating to unit employees' conditions of employment or the Union's representational responsibilities in connection with such matters. Finally, there is no basis in the record on which to conclude that, at the time of the request, there was a reasonable likelihood of such discussions, activities, or Congressional action.

In these circumstances, we conclude that any connection between the Union's lobbying efforts and its broad representational responsibilities under the Statute was too attenuated to support a conclusion that the requested information was "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining[,]" under section 7114(b)(4)(B) of the Statute. As such, the Respondents did not violate the Statute by denying the Union's request for the report. Accordingly, we will dismiss the complaint in Case No. 9-CA-00064.

In finding that the record before us does not establish a sufficient link between the Union's lobbying efforts and collective bargaining under the Statute, we do not address whether, or under what circumstances, such link could be established. We note, however, that a labor union representing Federal employees may have particular representational interests in lobbying Congress. Indeed, Congress may determine directly many conditions of employment of Federal employees. See, for example, Fort Stewart Schools, 110 S.Ct. at 2048 (Court stated that the "wages and fringe benefits of the overwhelming majority of Executive Branch employees are fixed by law . . . and are, therefore . . ." nonnegotiable under the Statute). Compare Lehnert v. Ferris Faculty Association, 59 U.S.L.W. 4544, 4547 (May 30, 1991) ("The dual roles of government as employer and policymaker . . . make the analogy between lobbying and collective bargaining in the public sector a close one."); Abood v. Detroit Board of Education, 431 U.S. 209, 236 (1977) ("The process of establishing a written collective-bargaining agreement prescribing the terms and conditions of public employment may

require not merely concord at the bargaining table, but subsequent approval by other public authorities; related budgetary and appropriations decisions might be seen as an integral part of the bargaining process.").

C. Case No. 9-CA-00298

1. The BOS Report is Necessary

In Case No. 9-CA-00298, the Union requested the BOS report "to prepare for mid-term negotiations on the procedures to be observed . . . and on the appropriate arrangements for unit employees adversely affected by any future decisions to contract out unit jobs." Stipulation at 5, para. 18. As noted previously, Article 28 of the parties' agreement pertains to contracting out. See n.8. In addition, the parties stipulated that the Union "has the right to initiate the reopening of the collective bargaining agreement, including Article 28 . . . for mid-term negotiations." Stipulation at 6, para. 18.

In our view, the BOS report was necessary for the Union to prepare for mid-term bargaining. It is clear that the BOS report was requested "to investigate the apparent differences between claimed savings at contracted . . . activities and the actual increase in financial obligations at those same stations[.]" Stipulation at 3, para 8. It is clear also that the report included a study of activities contracted out of Respondent Whidbey, the result of which was the loss of jobs in the Union's bargaining unit. It is reasonable to conclude that, in determining whether to seek mid-term negotiations involving contracting out activities at Respondent Whidbey and in preparing for such negotiations, information concerning previous contracting out decisions would be useful to the Union. For example, as noted by the General Counsel, "a review of the report might help the Union calculate the likelihood of future contracting out actions (i.e., the less favorable [the BOS] report was, the less likely that contracting out would continue). Such information would allow the Union to decide the amount of negotiating resources it would expend on Article 28." General Counsel's Brief at 8-9. We note that section 2 of Article 28 expressly applies to, among other things, any intentions by the Respondents to "expand any existing contracts. . . ." See n.8. At a minimum, information concerning the cost-effectiveness of existing contracts would be useful in determining whether such expansion was likely.

Moreover, the Respondents' assertion that the BOS report "does not effect [sic] the conditions of employment of the bargaining unit[]" is misplaced. Respondents' Brief at 5. Nothing in the record supports a conclusion that the Union was seeking to bargain over the report. Instead, the Union sought the report in an effort to determine whether to reopen Article 28 of the parties' agreement. The parties stipulated that the Union has a right to reopen Article 28 of the parties' agreement for mid-term negotiations. As such, the Respondents' reliance on various Authority negotiability decisions is misplaced. The issue in this case involves the Respondents' obligation to provide information, not the Respondents' obligation to bargain over particular proposals.

Based on the foregoing, we conclude that the record establishes that, in Case No. 9-CA-00298, the BOS report is necessary, within the meaning of section 7114(b)(4) of the Statute.

2. Violations of the Statute

We have concluded that, in Case No. 9-CA-00298, the BOS report is necessary and that disclosure of the report is not prohibited by law. As the parties stipulated that the other requirements of section 7114(b)(4) were satisfied in this case, we conclude that the Union was entitled to a copy of the BOS report pursuant to section 7114(b)(4) of the Statute.

It is undisputed that Respondent Whidbey failed to furnish a copy of the BOS report to the Union. We note, in this regard, that it is unclear whether Respondent Whidbey had actual custody of the report. See stipulation at 6, para. 20 (Respondent Commander replied to the Union's request by stating that the request had been forwarded to Respondent

Commander because the report "was prepared at our request and is in our custody."). However, the parties stipulated that the report is normally maintained and reasonably available. Compare NWS, 38 FLRA at 128-29 (Authority rejected respondent's claim that requested information was not normally maintained because it was maintained in a different component of agency). As such, the physical location of the records is irrelevant. Id. at 129. Moreover, there is no assertion that Respondent Whidbey was in any way prevented from complying with its obligations under section 7114(b)(4) of the Statute. Compare U.S Department of the Interior Washington, D.C. and U.S. Department of the Interior, National Park Service, Western Regional Office, San Francisco, California, 37 FLRA 804, 805 (1990), application for enforcement filed sub nom. FLRA v. U.S. Department of the Interior, Washington, D.C., Nos. 90-70517, 90-70542 (9th Cir. Oct. 3, 1990) (lower level respondent's failure to comply with section 7114(b)(4) was at direction of higher level management). In these circumstances, we conclude that Respondent Whidbey failed to comply with its obligations under section 7114(b)(4) of the Statute and, thereby, violated sections 7116(a)(1), (5), and (8) of the Statute. To remedy the violation, we will, among other things, direct Respondent Whidbey to provide the Union with a copy of the BOS report.

We find also that Respondent Commander unlawfully interfered in the bargaining relationship between Respondent Whidbey and the Union and, thereby, violated section 7116(a)(1) of the Statute. In this regard, we reject as misplaced the Respondents' argument that Respondent Commander did not violate the Statute because it "has no bargaining obligation" with the Union. Respondents' Brief at 3. Respondent Commander has not been charged with failing to bargain with the Union. Compare Philadelphia Naval Base, Philadelphia Naval Station and Philadelphia Naval Shipyard, 37 FLRA 79, 88 (1990) (Authority held that higher level agency component did not refuse to bargain with union because that component had no bargaining relationship with the union). Instead, Respondent Commander has been charged with unlawfully interfering with the bargaining relationship between Respondent Whidbey and the Union. It is well established that when higher level agency management prevents a lower level from complying with its obligations under the Statute, the higher level violates the Statute. See, for example, U.S. Department of Health and Human Services, Public Health Service and Centers for Disease Control, National Institute for Occupational Safety and Health, Appalachian Laboratory for Occupational Safety and Health, 39 FLRA 1306, 1316 (1991), petition for review filed sub nom. Public Health Service v. FLRA, No. 91-2089 (4th Cir. May 14, 1991). See generally Headquarters, Defense Logistics Agency, Washington, D.C., 22 FLRA 875 (1986). Here, the Union had a right, under section 7114(b)(4) of the Statute, to a copy of the BOS report and, by its actions, Respondent Commander unlawfully interfered with the Union's right. As such, Respondent Commander violated section 7116(a)(1) of the Statute.

V. Summary

Section 7114(b)(4) of the Statute requires an agency to furnish to the exclusive representative of its employees, upon request and to the extent not prohibited by law, information which is reasonably available and necessary for the union to carry out effectively its representational functions. There is no dispute that the requested information is reasonably available, normally maintained, and does not constitute guidance, advice, counsel or training for management officials relating to collective bargaining. We have concluded also that disclosure of the requested information to the Union is not prohibited by law.

In Case No. 9-CA-00064, we conclude that the record does not establish that the requested information was necessary, within the meaning of section 7114(b)(4) of the Statute. Therefore, we find that the Respondents did not violate the Statute by failing to furnish the requested information to the Union and we will dismiss the complaint.

In Case No. 9-CA-00298, we conclude that the requested information is necessary, within the meaning of section 7114(b)(4) of the Statute. Accordingly, for the reasons set forth above, we conclude that the Respondents violated the Statute as alleged in the complaint.

VI. Order

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that:

A. The Naval Air Station, Whidbey Island, Oak Harbor, Washington, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 1513, AFL-CIO, the exclusive representative of certain of its employees, a copy of the Base Operations Support (BOS) report requested by the Union on or about January 25, 1990.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish the American Federation of Government Employees, Local 1513, AFL-CIO, the exclusive representative of certain of its employees, a copy of the BOS report.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 1413, AFL-CIO, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of the Naval Air Station, Whidbey Island, and shall be posted in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted, and shall be maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

B. The Commander Naval Air Pacific, San Diego, California, shall:

1. Cease and desist from:

(a) Taking actions which interfere with the collective bargaining relationship between the American Federation of Government Employees, Local 1513, AFL-CIO, and the Naval Air Station, Whidbey Island, Oak Harbor, Washington (NAS Whidbey).

(b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Post at its NAS Whidbey facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 1514, AFL-CIO, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of the Naval Air Force Pacific Fleet, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

The complaint in Case No. 9-CA-00064 is dismissed.

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1. Section 7102 provides as follows:

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

2. Section 7103(a)(14) provides, as relevant here:

"conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title[.]

3. As noted previously, except for arguments that the BOS report is not necessary and that disclosure of the report is prohibited by law, the parties stipulated that all of the other requirements of section 7114(b)(4) have been met.

4. In this connection, we agree with, and the Respondents do not dispute, the General Counsel's assertion that the Union's lobbying activities do not constitute "political activities prohibited under subchapter III of chapter 73 of [title 5 of the United States Code]," so as to be excepted from the statutory definition of conditions of employment under section 7103(a)(14). The subchapter referred to in section 7103(a)(14)(A) "contains restrictions on partisan political activities of federal employees, and protects them from being required or coerced to engage in political activity." Fort Stewart Schools v. FLRA, 110 S.Ct. 2043, 2046 (1990) (Fort Stewart Schools). See also Blaylock v. United States Merit Systems Protection Board, 851 F.2d 1348 (11th Cir. 1988). We will address separately the Respondents' argument in Case No. 9-CA-00298 that the report does not affect unit employees' conditions of employment.

5. U.S.C. 7211 provides:

Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

6. Similarly, we do not address the extent to which the Union's lobbying efforts may be protected by the U.S. Constitution. See generally Thomas v. Collins, 323 U.S. 516 (1945); Thornhill v. Alabama, 310 U.S. 88 (1940). See also Connecticut State Federation of Teachers v. Board of Education Members, 538 F.2d 471, 478 (2d Cir. 1976) ("Nor can it be questioned that the First Amendment's protection of speech and associational rights extends to labor union activities.") (citations omitted).

7. Compare Internal Revenue Service, Memphis Service Center, Case No. 4-CA-30371, ALJ Decision Reports No. 66 (May 17, 1984), where the judge determined that the respondent did not fail to comply with section 7114(b)(4) of the Statute by refusing to furnish the union with information requested for the purpose of lobbying Congress. No exceptions were filed with the Authority to the judge's decision.

8. Article 28 provides:

Section 1. Management and the Union will endeavor to minimize the effect of contracting out decisions upon bargaining unit employees, in matters affecting the work situations and employment relationships, insuring impact and implementation is fully negotiated.

Section 2. The Employer shall normally give the Union sixty (60) days advance notice of its intention to "study" or do "cost comparison surveys" or to expand any existing contracts that may impact upon the bargaining unit members. . . .

Section 3. Realignment of Workforce. The Employer agrees to notify the Union as soon as possible of proposed realignment of workforce actions which may adversely affect unit employees. . . .

Section 4. Training regarding Commercial Activities studies and/or impending cost comparisons . . . may be made available to the Union, provided there are no substantial cost factors. . . .

Exhibit 2 to Stipulation at 36.

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT take actions which interfere with the collective bargaining relationship between the American Federation of Government Employees, Local 1513, AFL-CIO, and the Naval Air Station, Whidbey Island, Oak Harbor, Washington.

WE WILL NOT in any like or related manner interfere with the collective bargaining relationship between the American Federation of Government Employees, Local 1513, AFL-CIO, and the Naval Air Station, Whidbey Island, Oak Harbor, Washington.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

_____ Naval Air Force Pacific Fleet

Dated:_____

By:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103 and whose telephone number is: (415) 744-4000.

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the American Federation of Government Employees, Local 1513, AFL-CIO, the exclusive representative of certain of our employees, a copy of the Base Operations Support (BOS) report requested by the Union on or about January 25, 1990.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the American Federation of Government Employees, Local 1513, AFL-CIO, the exclusive representative of certain of our employees, a copy of the BOS report.

_____ Naval Air Station Whidbey Island

Dated:_____

By:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103 and whose telephone number is: (415) 744-4000.

